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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Aldila, Inc.
v.
Lott

Cancellation No. 25,703

Kenneth L. Wilton of Small Larkin LLP for Aldila, Inc.

Kathryn Jennison Shultz of Jennison & Shultz, P.C. for Kelly Lott.

Before Hohein, Wendel and Rogers, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Aldila, Inc. has petitioned to cancel the registration owned by Kelly Lott for the mark "ALDILA" and design, as reproduced below,



for "hand creams, lotions and gels; facial creams, lotions and gels; day creams; night creams; bath lotions, gels and creams; mineral baths; shower and bath creams, lotions and gels; body masques; vegetable mud; moisturizing lotions, cremes, oils and masques; cleansing gels; facial and body scrubs; collagen; fade creams and lotions; eye and throat creme; eye gels; blemish gels, creams and lotions; facial masques; [and] perfumes".¹ As grounds for cancellation, petitioner alleges that it "is in the business of manufacturing and selling sports equipment, principally golf shafts"; that it is the owner of a subsisting registration for the mark "ALDILA" for "sporting goods--namely, golf clubs, golf club heads and golf club shafts";² that since at least as early as its claimed March 1, 1974 dates of first use, petitioner "and its predecessors in interest have continuously and extensively advertised, promoted and sold a variety of products in connection with the ALDILA mark and trade name throughout the United States"; that "[t]hrough extensive use and promotion, the ALDILA mark and trade name have become so well and favorably known to the public throughout the United States as to be a famous mark and name"; and that respondent's "ALDILA" and design mark so resembles petitioner's previously used and registered mark "ALDILA" and its previously used trade name "ALDILA" as to be

¹ Reg. No. 1,996,927, issued on August 27, 1996 from an application filed on August 29, 1995, which sets forth a date of first use anywhere of July 1995 and a date of first use in commerce of August 24, 1995.

² Reg. No. 1,029,465, issued on January 6, 1976 from an application filed on August 7, 1974, which sets forth dates of first use of March 1, 1974; renewed.

likely, when applied to respondent's goods, to cause confusion, mistake or deception.

Respondent, in her answer, has denied the salient allegations of the petition to cancel.

The record consists of the pleadings; the file of the involved registration; and, as petitioner's case-in-chief: the testimony, with exhibits, of Carla Bahl, petitioner's advertising manager; respondent's answer, including the exhibit which is part of such response, to petitioner's Interrogatory No. 9; and copies of 17 third-party registrations.³ Respondent did not take testimony or otherwise introduce any evidence. Only petitioner filed a brief and neither party requested an oral hearing.

³ Although each of such registrations, as stated in petitioner's notice of reliance thereon, is "offered to show the relatedness of the goods at issue in this proceeding," it is noted that only three of the registrations issued on the basis of use in commerce, with the remaining 14 having issued pursuant to the provisions of Section 44 of the Trademark Act, based upon the registrants' ownership of foreign registrations. As stated in *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 (TTAB 1988) at n. 6:

Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source. See: *In re Great Lakes Canning, Inc.*, 227 USPQ 483, 484 (TTAB 1985), and *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986).

However, as to third-party registrations which are based upon foreign registrations, it is pointed out that such registrations "are not even necessarily evidence of a serious intent to use the marks shown therein in the United States on all of the listed goods ..., and they have very little, if any, persuasive value on the point for which they were offered." *Id.* Consequently, just three of the 17 third-party registrations offered by petitioner in support of its contention that the parties' goods are related may be said to have any probative value.

Turning first to the issue of priority, petitioner contends among other things that such is not an issue because it "relies upon its incontestible [sic] registration for 'ALDILA', the validity of which has not been challenged by Respondent." It is settled, in this regard, that insofar the parties' marks are concerned, priority of use is not in issue where the certified copy of the registration relied upon by a petitioner was prepared reasonably contemporaneously to the commencement of the petition to cancel;⁴ the certified copy either shows both the current status of such registration as being subsisting and the current title thereto as being in the name of the petitioner, or a witness having personal knowledge of the current status of and current title to the pleaded registration testifies that it is subsisting and owned by the petitioner; and the filing date of the application which matured into such registration is shown to be earlier than the filing date of the application which resulted in the involved registration for the respondent's mark. See, e.g., *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, 1428-29 (TTAB 1993) at n. 13; *American Standard Inc. v. AQM Corp.*, 208 USPQ 840, 841-42 (TTAB 1980); and TBMP §703.02.

⁴ Under Trademark Rule 2.122(d)(2), "[a] registration owned by any party to a proceeding may be made of record in the proceeding by that party by appropriate identification and introduction during the taking of testimony or by filing a notice of reliance, which shall be accompanied by a copy (original or photocopy) of the registration prepared and issued by the [United States] Patent and Trademark Office showing both the current status of and current title to the registration."

Here, petitioner offered as an exhibit, through the September 2, 1998 testimony of its witness, a plain copy of the October 15, 1996 certificate of renewal of its pleaded registration for its mark. Such copy clearly is not certified to be a true copy of the renewal of the pleaded registration and thus fails to demonstrate the current status of and title to the registration. Moreover, while petitioner's witness testified to her knowledge that such registration was currently owned by petitioner, she did not indicate that the registration was currently subsisting. Furthermore, petitioner has otherwise failed to make its pleaded registration properly of record since the plain copy of a certified copy thereof which accompanies the November 21, 1996 filing of the petition to cancel⁵ was prepared on December 27, 1995, and thus is not reasonably contemporaneous thereto, and the accompanying plain copy of the same October 15, 1996 certificate of renewal, as noted above, fails to show the current status of and current title to such registration.

Nevertheless, at least as to petitioner's use of its "ALDILA" mark and trade name in connection with golf shafts, the record is clear that priority of use lies with petitioner. The uncontroverted testimony of Ms. Bahl establishes that petitioner has continuously used such mark and trade name in connection with its golf shafts since either its inception in 1972 or at least no

⁵ Under Trademark Rule 2.122(d)(1), "[a] registration of the ... petitioner pleaded in [a] ... petition to cancel will be received in evidence and made part of the record if the ... petition is accompanied by two copies (originals or photocopies) of the registration prepared and issued by the [United States] Patent and Trademark Office showing both the current status of and current title to the registration."

later March 1, 1974, which is stated to be the dates of first use claimed in its pleaded registration. Specifically, she testified that petitioner has sold its "ALDILA" golf shafts throughout the United States "[s]ince the first day we opened our door, 1972," and affirmed that, since 1972, petitioner has always been called Aldila. (Bahl dep. at 68.) Although, on cross-examination, she admitted that she did not personally know the date petitioner first used its "ALDILA" mark on golf shafts, she further stated that as far as she knows the March 1, 1974 dates of first use set forth in petitioner's pleaded registration are accurate. Thus, in either case, the earliest dates upon which petitioner can rely herein are long prior to the August 27, 1996 filing date of the application underlying respondent's registration for her "ALDILA" and design mark, which in the absence of testimony or other evidence by respondent is the earliest date upon which she can rely in this proceeding. See, e.g., Lone Star Manufacturing Co., Inc. v. Bill Beasley, Inc., 498 F.2d 906, 182 USPQ 368, 369 (CCPA 1974); Columbia Steel Tank Co. v. Union Tank & Supply Co., 277 F.2d 192, 125 USPQ 406, 407 (CCPA 1960); Hilson Research Inc. v. Society for Human Resource Management, supra; and American Standard Inc. v. AQM Corp., supra.

The remaining issue to be determined, therefore, is whether respondent's "ALDILA" and design mark, when used in connection with any of the goods identified in her involved registration, so resembles petitioner's previously used "ALDILA" mark and trade name for golf shafts as to be likely to cause

confusion, mistake or deception as to the source or sponsorship of the respective goods.

According to the record, petitioner is a small company with under 50 employees. Its current business consists of manufacturing and selling graphite golf shafts, although it also makes for its own use graphite prepreg, which is the material from which its golf shafts are made. Petitioner commenced business, under the name Aldila, Inc., in 1972 as a private company. Petitioner "was sold in the late eighties to an investment group and then resold in 1991 to Forstmann & Little Investment Bankers" before becoming a public company, with its shares being traded on the NASDAQ exchange, in 1993. (Id. at 11.)

Petitioner principally sells its golf shafts to original equipment manufacturers, such as Callaway, Taylor Made, Ping and other brand name golf club producers, and to its distributors, who in turn sell its goods to the golfing public primarily through golf or pro shops and retail sporting goods outlets. However, as to petitioner's sales to original equipment manufacturers, Ms. Bahl indicated that "a lot of the product that we manufacture for that side of the business is private label" in that "they give us the product name, and we ... silk screen it on the shafts." (Id. at 23.) She further noted, with respect to such product, that while "[a] lot of times, it has their logo, their artwork, their design" on it, when asked whether "those private labeled shafts also have the Aldila name on them," she replied that "[s]ome do, some don't." (Id.) For example, even

though petitioner supplies golf shafts to Callaway, which "is the leading golf club manufacturer today," and has jointly developed golf shafts with Callaway, whether petitioner's "ALDILA" mark appears on golf clubs sold by Callaway (and currently it does not) is a year-by-year decision which, according to Ms. Bahl, "is strictly Callaway's call on that." (Id. at 32 and 65.) On the other hand, she testified that "[t]he distribution side is strictly the Aldila-branded product, the product that has Aldila, our name, A-l-d-i-l-a, silk screened or applied to the shaft in some way." (Id.) Such goods are marketed by petitioner's distributors not only to the general public but also to the those in the golf trade.

Petitioner advertises its golf shafts in magazines such as Golf Week and Golf World, which are nationally distributed publications directed to golfers as well as to original equipment manufacturers and others in the golf trade. Its golf shafts are also advertised, on a co-op basis, by several of its original equipment manufacturer customers in Golf and Golf Digest magazines, which are the two top nationally circulated consumer magazines for golfers, according to Ms. Bahl, and which are also read by persons in the golf industry. Petitioner additionally promotes its golf shafts in trade journals, such as Professional Clubmakers Society Journal, and occasionally has advertised its products in general interest sports magazines, such as Sports Illustrated.

Petitioner's net sales and its promotional expenditures for the ten-year period ending in 1997, as well as estimates thereof for 1998, were indicated to be as follows:

Year	Net Sales	Promotional Amounts
1998	\$58,000,000	\$1,200,000
1997	\$55,636,000	\$2,500,000
1996	\$58,394,000	\$2,500,000
1995	\$56,545,000	\$4,200,000
1994	\$79,779,000	\$6,120,000
1993	\$62,646,000	\$4,400,000
1992	\$47,665,000	\$3,200,000
1991	\$41,177,000	\$2,300,000
1990	\$32,274,000	\$2,600,000
1989	\$47,834,000	\$1,500,000
1988	\$24,908,000	\$1,000,000

The projected net sales for 1998 represent an estimated volume of between five and a half to six million golf shafts sold, while net sales for the years 1997, 1996 and 1995 (the only other years for which unit sales were given) respectively represent at least five million, four million and four million golf shafts sold.

According to Ms. Bahl, currently over 25 million people in the United States play golf, with between five and six million of those being "avid golfers who play over 25 times per year." She also testified that at present there are more than 50 golf club manufacturers in the United States. These statistics, she notes, were obtained from petitioner's subscription to reports from the National Golf Foundation and the Darnell Survey Company, which are companies which among other things respectively track the number of golfers and golf facilities in the United States and the number of golf shafts and other items of golf equipment sold in this country.

Ms. Bahl further testified that golf course golf or pro shops, in addition to selling golf equipment, sell other products such as clothing and gloves. Those shops which she characterized as "a little trendier" also sell jewelry, belts, "logoed items," such as hats with a golf equipment manufacturer's mark and towels with "the country club or the golf shop's logo on them," and "[s]unscreens ... for golfers" because "[g]olfers use a lot of sunscreen." (Id. at 57-58.) Off-course golf shops and sporting goods stores, she observed, "carry basically the same things that the on-course shops carry," including such "non-golf" items as "the sunscreens," which she noted are "not exclusively for golf." (Id. at 59-60.)

In her testimony, Ms. Bahl also referred to an exhibit, consisting of two pages from the September/October 1998 issue of Golf for Women magazine, which among such various new product introductions as certain golf shoes, golf balls, belts and a urethane material putter face, lists a review of "the Origins' therapy bath soap." (Id. at 61.) Specifically, the product called "ORIGINS SENSORY THERAPY" is referred to as "Origins' Muscle Easing Bath Soak" and is stated to be available "at Origins retail stores or call 800-ORIGINS." (Exhibit No. 15.) Similarly, in reference to another exhibit, consisting of several pages from the July/August 1998 issue of Golf for Women (which according to Ms. Bahl is "a leading golf magazine for women"),⁶ she points to "a new product introduction of various products

⁶ While petitioner formerly advertised therein, it does not presently do so.

from shoes to cases to games," including a sunscreen product by Callaway, and also notes the presence of a separate advertisement for the latter. (Bahl dep. at 64.) The advertisement, in particular, is a full-page ad for "Callaway GOLF SUN BLOCK BY NORDSTROM" which is indicated to be available "EXCLUSIVELY AT NORDSTROM." (Exhibit No. 16.)

With respect to promoting its name and mark through sponsoring events in the golf industry, Ms. Bahl stated that petitioner "do[es] some tournament sponsorships with some of our customers." (Bahl dep. at 65.) Besides noting that there are many other companies which sponsor events in the golf industry, she further testified, in particular, as follows:

Q Are you aware of any companies that offer personal care products that sponsor events in the golf industry?

A Yes.

Q Could you name those companies.

A The one I know for sure is Callaway. I am not aware of any others at this point.

Q Are you aware of any sunscreen manufacturers that sponsor any events in the golf industry?

A Yeah. It would be Callaway.

(Id. at 66.) Ms. Bahl added, on cross-examination, that while she did not know exactly when Callaway began offering sunscreen, she believes it was "recently, this year," i.e., in 1998, and admitted that it "was only a couple months ago," when she was

presented with a sample of such product, that she first learned of Callaway's entry into the sunscreen market. (Id. at 69-70.)

On cross-examination, Ms. Bahl additionally admitted that she has neither seen any of respondent's products in a golf or pro shop nor had anyone report to her of having seen such in any store which carries golf products. She also conceded that she has never seen any advertisements for respondent's products in any golf publications. Ms. Bahl admitted, furthermore, that petitioner has never received any correspondence addressed to respondent nor had occasion to return any of respondent's products.

Lastly, the record reveals three use-based third-party registrations which list such items as skin lotion, skin cream, hand lotion, bath lotion, bath gel, body oil, body lotion and/or perfume, on the one hand, and such products as golf clubs, golf club heads, golf irons, golf bags, golf balls and/or putters, on the other. These registrations, however, also recite a panoply of other equally unrelated goods in a multiplicity of classes, including, for example, tableware, sunglasses, magnifying glasses, tap water filtering units, watches, pens, jewelry, staplers, letter openers, leather goods, towels, tablecloths, apparel, playing cards, photograph albums, plaques, coasters, olives, marmalade, nuts, candies, pretzels, wines, distilled liquors, pipes, cigarette lighters and/or ash trays.

There is no information in the record concerning respondent and her activities under her mark, other than the fact that, prior to adopting the "ALDILA" and design mark, her counsel

performed a comprehensive trademark search. Such search revealed, among other things, the existence of petitioner's pleaded registration for its "ALDILA" mark.

Upon consideration of the pertinent factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists,⁷ we find that, on this record, petitioner has failed to satisfy its burden of demonstrating that confusion as to source or sponsorship is likely to occur. In particular, while we agree with petitioner that, in view of the shared presence of the arbitrary term "ALDILA," respondent's "ALDILA" and design mark is identical in sound and virtually the same in appearance and overall commercial impression to petitioner's "ALDILA" mark, there is simply nothing in the record which shows that any of respondent's goods are so closely related to any of petitioner's goods that the purchasing public would be likely to attribute a common source thereto when marketed under the respective marks. See, e.g., *In re Mars, Inc.*, 741 F.2d 395, 222 USPQ 938, 938-39 (Fed. Cir. 1984). Here, the respective goods of the parties are on their face distinctly different in nature, function and use, and the mere fact that some of the trendier

⁷ As our principal reviewing court has cautioned in this regard:

"We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal."

Electronic Design & Sales Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), quoting from *Witco Chemical Co. v. Whitfield Chemical Co.*, 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g*, 153 USPQ 412 (TTAB 1967).

golf or pro shops have expanded their merchandise offerings to include a host of non-golf items, such as sunscreen preparations, jewelry and logo bearing apparel, in addition to carrying the standard mix of golf clubs, shafts, heads, balls and bags, does not suffice to prove that the goods would typically be expected to originate from the same entity. Similarly, the mere fact that a muscle relaxant bath soak has been advertised, along with items of golf equipment, in a publication primarily of interest to women golfers does not serve to demonstrate that the parties' goods are closely related in a meaningful commercial sense.

Petitioner argues, however, that "[b]ecause golf is an outdoor activity, it is common for sunscreen, hand creams and other personal care items to be advertised in the same magazines and sold in the same stores as golf equipment." Additionally, petitioner contends that "skin care products and golf equipment are complementary products because the former are often used as protection while using the latter" and maintains that "[i]t is for this reason that skin care product manufacturers sponsor golf tours, and that skin care products are sold in on-course golf shops, off-course golf shops and in sporting goods stores together with Aldila's products."

The record in this case plainly does not support petitioner's assertions. Specifically, the few examples of advertisements introduced by petitioner are insufficient to demonstrate that it is indeed common for personal care items to be displayed together with golf equipment and that such a

practice fosters a likelihood of confusion. If anything, the scant number of examples offered by petitioner prove just the opposite--that it is relatively rare for personal care products to be displayed, either in magazines or at the retail level, along with golf equipment. On the entire record, there is only a single instance in which a golf equipment manufacturer and golf tour sponsor, namely, Callaway, also offered a sunscreen product. The "CALLAWAY GOLF" sun block, however, appears to be available only in a department store, namely, Nordstrom, rather than in golf or pro shops or retail sporting goods stores, and at the time of Ms. Bahl's testimony, it had been on the market for only a few months at most. Such recent action, by a single golf equipment manufacturer, shows that it is uncommon for those in the golf industry to expand their product lineup into the field of what petitioner refers to as personal care items.

Moreover, it is significant that, on their face, none of registrant's various cosmetics and perfumes, as identified in her registration, appear to encompass sunscreens. Furthermore, even if respondent's hand and facial creams, lotions and gels were to be read as including sunscreen or sun block products, the mere fact that such items, like golf equipment, are for outdoor use does not mean that the respective goods are "complementary products" or otherwise closely related in any significant commercial sense. It is settled, in this regard, that just because a broad term may be found which encompasses the parties' products does not mean that customers will view the goods as meaningfully related in the sense that they will assume that they

emanate from or are sponsored by or associated with a common source. See, e.g., General Electric Co. v. Graham Magnetics Inc., 197 USPQ 690, 694 (TTAB 1977) and Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd., 188 USPQ 517, 520 (TTAB 1975). Playing golf while wearing sunscreen does not make such an item a complementary product to, or otherwise enhance the use of, golf equipment, anymore than does, for example, wearing insect repellent.

Here, the goods at issue are so diverse in their nature, purpose and use that they would not be regarded by prospective purchasers as coming from or sponsored by the same entity, even when sold under essentially the same mark and trade name. The fact that petitioner has made of record three use-based third-party registrations, which arguably are the only third-party registrations with any probative value, fails to persuade us to the contrary. This is because, aside from their limited number, such registrations do not constitute evidence that the marks which are the subjects thereof are in use, and thus that the purchasing public has become conditioned to encountering certain products under the same or substantially identical marks.⁸ In addition, the particular registrations are so wide ranging, in that the scope of the various goods set forth therein cover a multiplicity of classes involving vastly different products, that they fail to demonstrate that any of the

⁸ See, e.g., AMF Inc. v. American Leisure Products, Inc., 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973) and In re Hub Distributing, Inc., 218 USPQ 284, 285-86 (TTAB 1983).

goods, including those of the same kinds as those at issue in this proceeding, would be considered closely related by the purchasing public for cosmetics and perfumes, on the one hand, and golf shafts and other golf equipment, on the other.

As a final consideration, there has not been a showing by petitioner that its "ALDILA" mark and trade name are famous and, therefore, would be entitled to a broad ambit of protection. See, e.g., *Kenner Parker Toys Inc. v. Rose Art Industries Inc.*, 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 862, 113 S.Ct. 181 (1992). While plainly a strong mark and name, inasmuch as the term "ALDILA" appears on this record to be arbitrary and without meaning other than as a mark and trade name, we nevertheless cannot conclude from petitioner's sales and advertising figures that such term is in fact famous. There is no breakdown, for instance, as to what percentage of each of petitioner's annual net sales represent golf shafts which continue to bear its "ALDILA" mark after their sale to original equipment manufacturers for incorporation into golf clubs, nor do petitioner's expenditures for promoting its mark and trade name appear to be anything more than modest at best in light of its level of net sales. Accordingly, in view of petitioner's failure to meet its burden of proof, the petition to cancel must fail.

Decision: The petition to cancel is dismissed.